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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

VICTOR AMADO RODRIGUEZ-FLORES, Petitioner, v. F. SEMAIA, et al., Respondents.	Case No.: 2:25-cv-06900-JGB-JC **PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER [DKT. 12]**

Petitioner Victor Amado Rodriguez replies to Respondents' opposition to motion for temporary restraining order, stating as follows:

A. This Court Should Rule on Petitioner's Motion, Despite the Page and Word Count Limits

Petitioner's undersigned counsel acknowledges counsel's oversight of Local Rule 11-6.1 and 11-6.2. Due to the emergent nature of this petition, complexity of the legal arguments involved, and urgent need to request a TRO seeking emergency

relief to prevent the continued tragedy of Respondent's illegal incarceration (which has now been continuing for over 2 months), Petitioner respectfully asks that this Court allow him to exceed the page and word count limit. Petitioner respectfully submits that counsel's oversight should not result in this Court's rejection of his entire application. In the event the Court is inclined to reject Petitioner's application on this basis, Petitioner asks for leave to correct the violation and submit an amended application that fully complies with the Local Rules.

B. Respondents Mischaracterize the Case's Posture

Respondents, in their opposition, mischaracterize the procedural and factual background and the present posture of Petitioner's pending petition for review of the denial of his application for withholding of removal by the immigration judge and the Board of Immigration Appeals.

First, Respondent is NOT subject to an executable final order of removal as the reinstatement of his prior removal is still under review by the Ninth Circuit, with the Ninth Circuit Court of Appeals with a Stay of Removal in place until a mandate is issued unless the Court orders otherwise. The mere fact that the Ninth Circuit had administratively closed the proceedings did not change the fact that Mr. Rodriguez-Flores could not be removed from the United States until the Ninth Circuit lifted the stay by issuing a mandate or otherwise.

Second, Mr. Rodriguez-Flores's Deportation Officer, Mr. Fernando Negrete (see Negrete Decl. ECF. 12.1), as well as Respondents' counsel, incorrectly state that, "On or about June 7, 2025, RODRIGUEZ-FLORES was served with a Notice of Intent/Decision to Reinstate Prior Order." But Respondents provide no proof that this was done, nor do they proffer a copy of this Notice. Moreover, Respondents had no authority to issue such a Notice and Decision, as the prior order is still the subject of review in the Ninth Circuit. And even if the U.S. Department of Homeland Security had that authority to issue a new Notice and Decision of Reinstatement, on service of such a notice, Petitioner would be entitled to challenge the reinstatement, request a new reasonable fear interview, and petition the Ninth Circuit for review of the reinstatement. But Petitioner has received no notice of any new reinstatement.

Instead, what Respondents may be referring to is that on June 7, 2025, Respondents issued Mr. Rodriguez-Flores a "Notice of Immigration Bond Cancelation" (which was not mailed to his sponsor, Dr. Dyke, until June 26, 2025). See Petitioner's motion, P. 11; Ex. "J." This Notice, which Mr. Rodriguez-Flores argues in his petition and in this ex parte application was issued without a hearing or any showing that circumstances have materially changed such that Mr. Rodriguez-Flores's re-incarceration would be justified because there is clear and convincing evidence that he is a danger to the community or a flight risk. In fact, this

is the entire reason that Mr. Rodriguez-Flores has ended up before this Honorable Court.

Third, Respondents, again, mischaracterize Mr. Rodriguez-Flores's July 11, 2025, attempt to have a bond hearing before an IJ. Although Mr. Rodriguez-Flores filed a motion for custody redetermination, the IJ declined to entertain that motion or consider the merits of it based on the IJ's determination that he lacked jurisdiction. The IJ claimed that since Mr. Rodriguez-Flores had not been detained in excess of 180 days (again, after his recent detention without a hearing and without a showing of materially changed circumstances by the Respondents), he therefore lacked jurisdiction. See Ex. K ("*Court does not believe, under the circumstances, it has jurisdiction to entertain a bond. Respondent re-detained with administratively final order of removal. Respondent detained only 34 days since DHS re-detention.*"). In fact, the IJ went on to state on the records that if he had jurisdiction to entertain the bond or was presented with a federal district court order granting him the authority to review Petitioner's detention, he would have granted bond in the same amount and under the same conditions as the prior IJ.

Fourth, Respondents incorrectly claim that the Ninth Circuit's administrative closure of his appeal and then reopening it somehow constitutes materially changed circumstances warranting his re-detention without a hearing or any type of due process whatsoever. Respondents make this claim without pointing to a shred of

legal authority, when Mr. Rodriguez-Flores has cited a slew of cases, including in the Ninth Circuit, holding that Respondents must provide him a hearing in which they must demonstrate materially changed circumstances prior to re-detaining him.

C. Petitioner's Claims Do Not Run Afoul of the INA's Jurisdiction-stripping Provisions.

The government incorrectly contends that § 1252(g) bars this Court's jurisdiction to hear Petitioner's claims. But this Court has the power to decide whether the government lacks the authority to detain Petitioner without providing him a due process hearing to determine whether his incarceration is justified. Most importantly, § 1252(g) references the district courts' lack of jurisdiction to hear a cause or claim. Here, however, Petitioner is seeking a TRO to maintain the status quo. An application for a TRO is not a cause or a claim. Furthermore, under the All Writs Act (28 U.S.C. § 1652), courts have expansive power to award equitable relief to preserve their jurisdiction by maintaining the status quo. Petitioner being at liberty in the United States is the status quo, opposite to what the government is arguing. By taking Petitioner into custody without affording him his due process rights, the government has altered the status quo.

As to the government's argument relating to § 1252(a)(5), Petitioner is not asking for review of the merits of his withholding of removal claim, which is presently properly under review in the Ninth Circuit. Petitioner is simply requesting this Court to review the legality of his detention, not removal.

Similarly, §1252(b)(9) applies to "review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section."

Here, the questions of law and fact, including interpretation and application of constitutional and statutory provisions, that Petitioner is raising do not arise from any action taken or proceeding brought to remove him from the United States. As mentioned, Petitioner is properly bringing those challenges through the proper review channels— the BIA and the Ninth Circuit. In these proceedings, Petitioner is challenging the legality of his detention. By promulgating §1252(b)(9), Congress basically codified the holding in *St. Cyr*; i.e., AEDPA and IIRIRA did not repeal the district courts' habeas jurisdiction, as habeas is available to challenge detention, not substance. Section 1252(b)(9) does not affect the district court's jurisdiction; it expands the circuit court's jurisdiction.

At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of executive encroachment on liberty, and it is in that context that its protections have been strongest. *See I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001). These protections extend fully to noncitizens subject to an order of removal. *Id.*

Federal courts have jurisdiction to hear habeas petitions, because "absent suspension, the writ of habeas corpus remains available to every individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (plurality opinion of O'Connor, J.); U.S. Const.Art. I, § 9, cl. 2 ("The Privilege of the Writ of Habeas Corpus shall not be suspended."); 28 U.S.C. § 2241(c)(3) (stating federal courts may grant the writ to any person "in custody in violation of the Constitution or laws or treaties of the United States").

Any holding that this Court lacks jurisdiction — despite the compelling context of this case — would expose Petitioner to the substantiated risk of death, torture, or other grave persecution before his legal claims can be tested in a court. That would effectively suspend the writ of habeas corpus, which the Constitution prohibits. The Supreme Court has instructed, "It must never be forgotten that the writ of habeas corpus is the precious safeguard of personal liberty and there is no higher duty than to maintain it unimpaired." *Bowen v. Johnston*, 306 U.S. 19, 26 (1939). And under the law, the federal district courts are generally the "first responders" when rights guaranteed by the Constitution require protection. For the foregoing reasons, this Court has jurisdiction in this case.

D. Petitioner Has Shown He Will Suffer Irreparable Harm Absent a Mandatory Preliminary Injunction and the Balance of Interests Favors Petitioner

Respondents state in boilerplate language, without pointing to any of Petitioner's arguments in his TRO application, or any specifics relating to Petitioner's case, that he has not shown he will suffer irreparable harm absent a mandatory preliminary injunction and that the balance of interest favors the government. Without these specifics in the government's opposition, Petitioner is unable to reply to the government's argument in this regard. Petitioner therefore refers to his TRO and the arguments made thereto in support of his claim that he will suffer irreparable harm and the balance of interests tipping in his favor.

D. Conclusion

Petitioner asks the Court to grant his request for a temporary restraining order.

Dated: August 12, 2025 LAW OFFICES OF BASHIR GHAZIALAM, PC

By: /s/ Bashir Ghazialam
Bashir Ghazialam

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LOCAL RULES CERTIFICATION

Counsel of record for Petitioner certifies that this brief contains 1,774 words, which complies with the word limit of this Court's Local Rule 11-6. 1.

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2025, I caused the foregoing document to be electronically filed with the Clerk of the Court for the United States District Court for the Central District of California by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

Executed on: August 12, 2025 /s/ Bashir Ghazialam
Bashir Ghazialam